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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1954
No. 678

PAUL JARRICO,

Petitioner,

vs.

RKO RADIO PICTURES, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

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PAUL JARRICO,

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RKO RADIO PICTURES, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

Your petitioner, Paul Jarrico, respectfully prays for a Writ of Certiorari to the District Court of Appeal of the State of California to review its affirmation of the judgment in the Superior Court of Los Angeles County in favor of the Respondent and against the petitioner herein.

I.
Jurisdiction.

This case was tried without jury in the Superior Court of Los Angeles County, California. A favorable judgment was entered on respondent's action for declaratory relief and against petitioner on his cross-complaint for damages. No written opinion was made by the trial court. This judgment was affirmed in the District Court of

Appeal of the State of California and is reported in 128 A. C. A. 201, 274 P. 2d 928. A copy of the opinion of the District Court of Appeal is attached hereto and made a part hereof. Petitioner petitioned for a hearing before the Supreme Court of the State of California and on the 15th day of December, 1954, the Supreme Court denied a hearing without opinion with Mr. Justice Carter dissenting.

The jurisdiction of this court is invoked under 28 U. S. C., Section 1257.

II.

Questions Presented in This Petition for Writ.

(a) Whether the provisions of the Labor Management Act of 1947 as interpreted by the Supreme Court prohibit an employer from enforcing provisions of an individual hiring contract which contain terms less favorable than those granted to the entire bargaining unit under a collective bargaining agreement in effect at the time the individual contract was entered into.

(b) Whether the enforcement of the provisions of a collective bargaining agreement governed by the Labor Management Relations Act of 1947 where the employee accepted lesser rights in an individual contract interferes and "prevents that freedom of contract guaranteed by the Constitution" as held by the District Court of Appeal of California.

(c) Whether the District Court of California properly held that an individual employee contract agreeing to waive the right to screen credit supersedes and overrides the provisions of an industry-wide collective bargaining agreement in which the employer agrees under all cir-

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cumstances to grant screen credit to the writer actually writing a screen play where that credit has been determined by arbitration in accordance with the standard procedure established in the collective bargaining agreement.

(d) Whether, under the provisions of the Labor Management Relations Act, 1947, an employer may require an employee by individual contract to agree to terms less favorable than those granted to the entire group of which the employee is a part; and whether such a contract may be held to supersede the conflicting provisions of the collective bargaining agreement.

(e) Whether the act of an employee in entering into an individual contract of employment with an employer in which he agrees under certain circumstances to waive screen credit rights guaranteed him under mandatory provisions of the industry-wide collective bargaining agreement may be enforced againts the employee contrary to the intendment of the Labor-Management Relations Act, 1947.

III.
Statutes Involved.

The Act of June 23, 1947, Title 29 U. S. C., Section 141 *et seq.*, commonly known as the Labor-Management Relations Act of 1947, provides in its primary applicable portions as follows:

> (a) "Sec. 151. Findings and Declaration of Policy. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the neces-

sary effect of burdening or obstructing commerce . . .

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

(b) "Sec. 157. Right of employees as to organization, collective bargaining, etc.

"Employees shall have the right to . . . bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . .

(c) "Sec. 158. Unfair Labor Practices.

"(a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title; . . .

(d) "Sec. 159. Representatives and elections—Exclusive representatives; employees' adjustment of grievances directly with employer.

"(a) Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective

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bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment."

IV.

Statement of the Material Facts.

Petitioner, Paul Jarrico was employed in January of 1951, as a screen writer by RKO Radio Pictures, Inc., hereinafter referred to as RKO. At the time Jarrico commenced work he entered into an individual contract of employment with the employer. At the same time there was in effect in the Motion Picture Industry a collective bargaining agreement wherein RKO recognized the Screen Writers' Guild as the exclusive bargaining agent for all writers in the motion picture industry and agreed to be bound by the provisions thereof. [See Clerk's Transcript for full text of agreements.]

The collective bargaining agreement provided among other things that:

(a) "The producer . . . recognizes the Guild as the exclusive representative for the purpose of collective bargaining for all writers in the motion picture industry . . .

(b) "The producer agrees that credits for screen authorship . . . shall be given only pursuant to

the terms and in the manner prescribed in schedule 'A' . . .

(c) "Schedule 'A' provided in part that:

(1) "Credit *shall* be given on the screen for the screen play authorship . . .

(2) "Writing credit as finally determined hereunder *shall* appear on the screen at one of the following places . . .

(3) "The decision of the Guild Arbitration Committee with respect to writing credits, insofar as it is rendered within the limitations of this schedule 'A,' *shall* be final and the producer *will accept and follow* the designation of screen credits contained in such decision and all writers shall be bound thereby." (Emphasis added.)

The individual employment contract between Jarrico and RKO provided in part that:

(a) "On condition that the writer keeps and performs all of the covenants and conditions by the writer to be kept or performed pursuant to this agreement, the credit, if any to be received by the writer for screen authorship shall be determined in accordance with the basic agreement . . .

(b) ". . . The writer will conduct himself with due regard to public convention and morals . . .

(c) "In the event of any breach of the terms of (the clause above), or in the event the writer shall be an object of public disgrace, obloquy ill will or ridicule at any time during the distribution of any of the picturers, the corporation shall thereafter be relieved of all its obligations under article III . . . (referring to the applicability of the basic agreement provisions for the granting of credits)."

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While employed as a writer at the studio, Jarrico was called before a Congressional Investigating Committee and declined to answer certain questions upon Constitutional grounds. He was discharged from his employment by RKO and thereafter, the issue of whether Jarrico was entitled to screen credit for the motion picture "LAS VEGAS STORY" was submitted to arbitration under the provisions of the collective bargaining agreement. Jarrico was awarded first screen credit under that arbitration. RKO refused to give credit in accordance with the provisions of the arbitration and released the picture with Jarrico's name deleted. Thereafter, an action was commenced by RKO seeking declaratory relief under the provisions of the contract and Jarrico cross-complained for damages. The Judgment of the Lower Court upheld the contention of RKO and appeal was taken through the State Courts in the State of California.

V.

Jurisdictional Questions Properly Raised.

The applicability of the Federal Statute referred to hereinabove was raised by the petitioner at the commencement of the trial in the lower court on a motion for judgment on the pleadings. Petitioner submitted that on the pleadings alone which set forth the collective bargaining agreement and the repugnancy between the collective bargaining agreement and the individual contract the petitioner should have been granted judgment based upon the United States Supreme Court decisions cited hereinafter. The motion for judgment on the pleadings was argued and the motion was denied without comment by the court below.

The decision of the District Court of Appeal attached hereto as an exhibit sets forth in detail the arguments raised by the Appellant there (the petitioner before this court).

In the Appellant's opening brief before the District Court of Appeal, Second Appellate District, State of California, the appellant there and the petitioner here raised the issue that "the Supreme Court has ruled that the individual may not waive the benefits of the Collective Bargaining agreement." (Appellants' Op. Br. pp. 14-17.)

On page 9 of Appellant's Closing Brief the appellant stated that:

> "The primary issue before the court is whether the principal of collective bargaining as established in the National Relations Act can be destroyed by permitting an employer to require an individual employee as a condition of employment to sign an agreement in which he surrenders rights guaranteed under the collective bargaining agreement. This is the issue of the case before the court and not the public's attitude or reactions to the alleged political beliefs of the appellant as suggested by the respondent."

This argument was further amplified in pages 12 to 19 of the Appellant's closing brief.

The District Court of Appeal responded to the raising of this issue only in the following manner by using the following language in its decision:

> "Appellant's argument with relation to the so-called basic agreement and the Guild is beside the issue. The controlling agreement in the circumstances is the

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one between the respondent and appellant regardless of the provisions of the basic agreement. Obviously, the Guild is without power to prevent that freedom of contract guaranteed by the Constitution. The contract between Appellant and respondent referred to in paragraph IV of the Trial Court's findings and the one referred to as of January 17th, 1951, is the controlling argument between the parties."

No further reference was made to the applicability of the Labor Management Relations Act and the decisions of the United States Supreme Court relating thereto by the District Court of Appeal.

In the brief submitted to the Supreme Court of the State of California, petitioning for hearing, the petitioner discussed this issue in paragraph V, pages 14 through 26. The Supreme Court denied the petition for hearing without comment and therefore made no reference to the Federal question which was timely raised at all stages of the proceedings.

VI.

Reasons Why Certiorari Should Be Granted.

The Congress of the United States has set forth in the Labor Management Relations Act of 1947 and its predecessor Acts the basic Labor Relations policy of the country. This Act has been interpreted in a series of cases by the United States Supreme Court, including *J. I. Case Company v. NLRB*, 321 U. S. 332, as establishing the basic principle of protecting the individual employee against an employer requiring him to yield benefits and

rights granted him under the collective bargaining agreement.

The collective bargaining agreement entered into in the Motion Picture Industry provided as a basic principle that the determination of screen credits "shall" be made in the manner as set forth in the collective bargaining agreement and that having been determined under the procedures as set forth therein the employer "shall" grant credit on the screen on the completed motion picture in accordance with this determination. The wording of the collective bargaining agreement is clear and unequivocal and is mandatory on the employer.

The arbitrary and unilateral decision of the Respondent herein to deprive the petitioner of the credit awarded him under the provisions of the collective bargaining agreement was based solely on the provisions of an individual contract wherein the employee consented to the waiver of the credit granted him under the collective bargaining agreement in the event he violated certain clauses of the contract.

When the petitioner sought in the courts below to secure a decision conforming to the decisions of the Supreme Court of the United States in interpreting the Labor Management Relations Act, the court below held that "obviously, the Guild is without power to prevent that freedom of contract guaranteed by the Constitution."

This decision of the District Court of Appeal runs directly contrary to the doctrine enunciated by the United

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States Supreme Court in *J. I. Case Company v. NLRB,* 321 U. S. 332 (1943) where Mr. Justice Jackson speaking about facts similar in principle to those of the instant case stated:

> "But however engaged, an employee becomes entitled by virtue of the Labor Relations Act somewhat as third party beneficiaries to all benefits of the collective bargaining agreement even if on his own he would yield to less favorable terms. The individual hiring contract is subsidiary to the terms of the trade agreement and may not waive any of its benefits any more than a shipper can contract away the benefits of filed tariffs, the insurer the benefits of standard provisions, or the utility customer the benefit of legally established rates.
>
> " 'Individual contracts, no matter what the circumstances that justify their execution, or what their terms, may not be availed of to defeat or delay the procedures prescribed by the NLRA looking to collective bargaining nor to exclude the contracting employee from a duly ascertained bargaining unit; nor may they be used to forestall, limit or condition the terms of the collective agreement. The Board asserts a public right vested in it as a public body charged in the public interest with the duty of preventing unfair labor practices' (*National Licorice Co. vs. Labor Board,* 309 U. S. 350, 364). Whenever private contracts conflict with its functions they obviously must yield or the Act would be reduced to futility.' It is equally clear since the collective bargaining agreement is to serve the purpose contemplated by the Act, the individual contract cannot be effective as a waiver of any benefit to which the employee would otherwise be entitled under the trade agreement."

In *Medo Photo Supply Corp. v. NLRB,* 321 U. S. 678 (1944), Chief Justice Stone pointed out in a situation where the employees themselves had asked to avoid the collective bargaining agreement that:

> "Orderly collective bargaining requires that the employer be not permitted to go behind the designated representatives in order to bargain with the employees themselves prior to such a revocation.
>
> "Petitioner was not relieved from its obligations because the employees asked that the union be disregarded. The statute was enacted in the public interests for the protection of the employee's right to collective bargaining and it may not be ignored by the employer, even with the employee's consent."

That there has been no change in this principle since the enactment of the Labor Management Relations Act, 1947 as indicated by *American Federation of Labor v. American Sash Co.,* 335 U. S. 538, 552, 1948 where Mr. Justice Frankfurter in his concurring opinion stated:

> "Under interpretations of the National Labor Relations Act 29 U. S. C. A. Sec. 151 *et seq.*, undisturbed by Taft-Hartley Act, 29 U. S. C. A. Sec. 141 *et. seq.*, and of the Railway Labor Act, 45 U. S. C. A. Sec. 151 *et seq.*, the bargaining representative designated by a majority of the employees had exclusive power to deal with the employees on matters of wages and working conditions. Individual contracts, whether on more or less favorable terms than those offered by the Union are barred."

The decision of the District Court of Appeal of California if allowed to stand will establish a pattern over-

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ruling the line of cases cited heretofore. The District Court decision would allow an employer to require that an individual employee contract to waive rights accorded him by the collective bargaining agreement. Such an interpretation would apply in all industries equally as in the Motion Picture Industry. No limitations are placed by the District Court on the language used and it states as a basic principle that the collective bargaining agreement cannot prevent an individual from entering into a contract with the employer accepting rights less than those granted in the collective bargaining agreement since this would prevent freedom of contract guaranteed by the Constitution.

It is submitted that Certiorari should be granted in this case in order to correct a decision in the California State Court which can only be interpreted as a nullification of the basic principles in the Labor Relations Acts of the Congress of the United States as interpreted by the Supreme Court of the United States.*

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*It should be noted that no issue exists in this case regarding the right of RKO to discharge the petitioner for the acts alleged to have been committed by the petitioner or for any other reason whatsoever. This right has not been questioned by the petitioner before the lower court nor is it questioned at the present time. What is questioned herein is whether the respondent having discharged the petitioner may continue to use the fruits of his labor without giving him the credit guaranteed him under the collective bargaining agreement. Any discussion of the propriety of the discharge of the petitioner by RKO is irrelevant to the issues raised in this petition.

VII.
Conclusions.

For the reasons as set forth herein, the Writ of Certiorari should be granted.

Respectfully submitted,

EDWARD MOSK,

Attorney for Petitioner.

SAMUEL ROSENWEIN,

Of Counsel.

EXHIBIT "A."

Opinion of the District Court of Appeal.

In the District Court of Appeal of the State of California, Second Appellate District, Division One.

RKO Radio Pictures, Inc., a corporation, Plaintiff and Respondent, vs. Paul Jarrico, Defendant and Appellant. Civil No. 19953.

Appeal from a judgment of the Superior Court of Los Angeles County, Orlando H. Rhodes, Judge.

For Appellant: Edward Mosk.

For Respondent: Mitchell, Silberberg and Knupp, by Arthur Groman.

This is an appeal from the judgment in an action for declaratory relief.

The action herein results from a controversy as to the rights of the parties according to the terms of an agreement between appellant and respondent. As recited in respondent's brief, "In 1951 respondent entered into a written contract with defendant-appellant (hereinafter referred to as appellant), Paul Jarrico, a motion picture screen writer, whereby it hired appellant to prepare a screen play for a motion picture property which it owned entitled "The Las Vegas Story."

"The written contract between appellant and respondent recited in part that an essential consideraion of the contract was the popularity and good reputation of appellant with the public. Further, appellant agreed that during the production and distribution of the motion picture he would conduct himself with due regard to public conventions and morals and would not do anything which would

tend to degrade him or bring him into public disgrace, obloquy, ill will or ridicule.

"The contract also provided that, on condition that appellant performed all the covenants and conditions imposed upon him, he would receive certain credit for screen authorship as determined by what was called the Basic Agreement between respondent and the Screen Writers Guild, a union of screen writers.

"Thereafter, appellant was subpoenaed to appear before the House Committee on Un-American Activities. While he was in attendance at a hearing of the Committee, but before he himself took the witness stand, a longtime associate of his named appellant as a Communist and an active member of the Communist Party. The associate further stated, among other things, that he had asked appellant to assure him that, in the event of a war between Russia and the United States, appellant would do nothing to help Russia, but appellant refused such assurance.

"Appellant was then called to the witness stand. He failed to deny the charges made against him, and refused to answer questions as to whether or not he was a member of the Communist Party on the ground that his answer might tend to incriminate him.

"The testimony, both of the witness against the appellant and of the appellant himself, was widely disseminated throughout the United States in newspapers, magazines, and by radio broadcasts.

"Respondent concluded appellant's conduct constituted a breach of his written agreement with it, and refused him screen credit.

"To secure a judicial determination of its rights respondent filed an action for declaratory relief against the

appellant, requesting the Court to determine whether or not appellant had breached his written agreement. After a trial without a jury, the court below found that appellant had become an object of public disgrace and ill will. It held that he had breached his contract, and that the respondent was discharged from any liability or obligation to give appellant screen credit.

"Appellant does not deny the terms of the written contract nor its execution by him. He does not question the finding of the trial court that his conduct rendered him an object of public disgrace and ill will. Indeed, appellant has raised no questions of fact whatsoever, and he appears before this court solely on the Clerk's Transcript on the basis of alleged questions of law."

Appellant's position is that "The basic questions which must be determined by this Court on appeal are four:

"1. May an individual member of a collective bargaining unit accept terms by individual contract with the employer which are in derogation of and are less than the minimum rights guaranteed in the industry wide collective bargaining agreement?

"2. May a party who agrees to an arbitration clause in a collective bargaining agreement, thereafter ignore the award made in accordance with the agreement?

"3. If the court answers the preceding two questions in the affirmative, then the issue arises as to whether the acts of the Appellant in exercising his constitutional rights were a violation of the 'morals clause' in the individual contract.

"4. If the court finds that the answer to question three is in the affirmative, then the court must determine whether

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such an agreement was contrary to public policy and therefore void."

In this connection appellant argues that:

"A. The Individual Contract Between Employer and Employee May Not Waive Any Benefits Granted to the Employee Under the Collective Bargaining Agreement.

"1. The Contract Establishes That Credits Are Exclusively the Province of the Screen Writers Guild."

"B. The Award of the Screen Writers Guild Arbitration Committee Was Final and Binding on RKO."

"C. The Appellant Did Not Act in Violation of Good Morals Within the Meaning of the Contract.

"1. The Assertion of Constitutional Right Cannot Be in Violation of Public Conventions and Morals."

"D. The Action of the Respondent in Depriving the Appellant of Credit Was a Violation of Federal Law and Illegal."

"E. A Contract Requiring the Waiver of a Constitutional Privilege is Void as Against Public Policy, and the Construction of a Contract Leading to This Conclusion Must Be Avoided."

"F. Respondent's Interpretation of the 'Morals Clause' Would Make the Contract Illusory insofar as the Grant of Credits to the Writer is Concerned."

The Court found, as recited in the comprehensive findings, "That it is true that by entering into the said written instrument of January 17, 1951, the defendant, expressly and impliedly, in fact and in law, promised and agreed to act with relation to his employment by the plaintiff in good faith and not to do anything of any nature which

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might injure or prejudice the plaintiff in connection with its utilization of the defendant's services. By his conduct and statements aforesaid, the defendant in material respects breached the conditions and covenants of good faith by which he was expressly and impliedly bound by the said written instrument of January 17, 1951, and by his conduct has released the plaintiff from any and all obligations to the defendant arising by and under the said written instrument."

Appellant's contentions cannot be upheld as to the facts as well as the law. The trial judge's findings are abundantly supported by the evidence and the law applicable thereto is elementary and without conflict. It should be noted at the outset that the Screen Writers Guild is not a party to the action. Appellant's argument with relation to the so-called "Basic Agreement" and the Guild is beside the issue. The controlling agreement, in the circumstances, is the one between the respondent and appellant regardless of the provisions of the "Basic Agreement." Obviously the Guild is without power to prevent that freedom of contract guaranteed by the Constitution. The contract between appellant and respondent referred to in paragraph IV of the trial court's findings and the one referred to as of January 17, 1951, is the controlling agreement between the parties. The evidence, as noted above, abundantly supports the trial court's conclusion that appellant violated this agreement. There are no errors in the record and the judgment is affirmed.

DORAN, *J.*

We concur:

WHITE, *P. J.*

DRAPEAU, *J.*

EXHIBIT "B."

In the Superior Court of the State of California, in and for the County of Los Angeles.

RKO Radio Pictures, Inc., a corporation, Plaintiff, vs. Paul Jarrico, Defendant. No. 597,008.

JUDGMENT FOR DECLARATORY RELIEF.

This cause came on regularly for trial on the 17th, 18th, 19th, 20th, 21st, 24th, 25th, 26th days of November, 1952, before the Honorable Orlando H. Rhodes, Judge Presiding in Department 14 of the above entitled court, sitting without a jury, trial by jury having been waived. The plaintiff appearing by Mitchell, Silberberg & Knupp, Arthur Groman, Peery Price and Lawrence Swezey and the defendant appearing by Katz, Mosk & Blum, Kenny and Morris and Edward Mosk, and evidence both oral and documentary having been introduced and the said evidence having been submitted to the Court for decision, and the Court having made and filed herein its Findings of Fact and Conclusions of Law:

IT IS ORDERED, ADJUDGED AND DECREED that on or about January 17, 1951, RKO Radio Pictures, Inc., the plaintiff and Paul Jarrico, the defendant, entered into a written agreement whereby plaintiff hired defendant as a screen writer subject to certain terms and conditions set forth therein and that pursuant to the terms thereof and by reason of defendant's engaging in conduct tending to bring him into public disgrace and ill will and by reason

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of defendant being an object of public disgrace and ill will, plaintiff had been and now is released and discharged from any and all liability, duty or obligation to give defendant any screen credit whatsoever in connection with the advertising or exhibition of the motion picture "THE LAS VEGAS STORY."

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant take nothing by reason of his counterclaim and cross-complaint herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant shall pay to plaintiff its costs herein amounting to the sum of

The Clerk is ordered to enter this judgment forthwith.

DONE IN OPEN COURT this 12 day of June, 1953.

ORLANDO H. RHODES,

Judge.

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October Term, 1954.

No. 678.

PAUL JARRICO,

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vs.

RKO RADIO PICTURES, INC.,

Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI.

This case presents no novel or startling questions of law.

Petitioner, Paul Jarrico, was employed as a writer by RKO[1] at a salary of $2,000 a week. His employment contract expressly provided that one of the considerations for which this substantial compensation was paid, was the popularity and good reputation of Mr. Jarrico with the public. [Clk. Tr. p. 50, lines 25-27.] Accordingly, he agreed, throughout the production and distribution of the motion picture in connection with which he was

[1]Conforming to the usage of Petitioner, we refer to Respondent, RKO Radio Pictures, Inc., by this customary abbreviation of its name.

employed, to do nothing which would incur the ill-will of the public.[2]

The trial court, by its findings of fact, emphasizes the importance to the employer of its continued good-will with the public to be maintained through its employees whose names are used in the publicizing or advertising of its pictures. [Clk. Tr. p. 50, lines 1-13.]

Petitioner does not dispute, and on the record can not dispute, that he flagrantly violated this term of his employment contract. The trial court so found. [Clk. Tr. p. 64, line 29, to p. 65, line 32; p. 66, line 23, to p. 67, line 18.] Petitioner does not bring to this court the evidence on which those findings were based.

Petitioner Jarrico, by his conduct,[3] "became" (in the language of the finding of the trial court, [Clk. Tr. p. 65, line 4]) "the object of public ill-will."

RKO could no longer obtain the affirmative good-will for which it bargained, for which it had paid Petitioner.

Not only that, but his association with RKO or its pictures would be actually detrimental to RKO.

RKO could—and did—alleviate the effects of Petitioner's conduct by refusing to use the name of Petitioner on the picture and its advertising.

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[2]"From the date hereof, and continuing throughout the production and distribution of the Pictures, the Writer will conduct himself with due regard to public conventions and morals, and will not do anything which . . . will tend to degrade him or bring him or the Corporation or the motion picture industry into public disgrace, obloquy, ill will, or ridicule, or which will offend public morals or decency." [Clk. Tr. p. 50, line 28; p. 51, line 5.]

[3]Set out at some length in the findings of the trial court. [Clk. Tr. pp. 60-65.]

In so doing, RKO was merely asserting its well established right, when Mr. Jarrico was guilty of a fundamental breach of his contractual obligation, "to treat the contract as broken and desist from any further effort on [its] part to perform." (*Anvil Mining Co. v. Humble* (1894), 153 U. S. 540, 551-552; see also 12 Am. Jur. 894, Sec. 338.)

Petitioner's insistence that RKO must continue to carry out the contract despite his fundamental breach was properly rejected by the State courts.

Petitioner Has Been Deprived of No Federal Right.

Petitioner apparently seeks certiorari on the ground that he has been deprived of a right claimed under a statute of the United States[4]—the Labor Management Relation Act of 1947.

He points out that a collective bargaining agreement was in effect between the Screen Writers Guild and RKO.

He asserts that under the collective bargaining agreement, RKO was obligated to use his name in advertising and announcing the picture; and that, since the collective bargaining agreement was authorized by Federal law, the judgment herein denying him such credit, deprives him of a right claimed under Federal law.

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[4]Petitioner refers (Pet. p. 2) only to "28 U. S. C. Section 1257." However, his statement of "Questions Presented" suggests the ground of jurisdiction we describe.

I.

There Was No Violation of the Collective Bargaining Agreement.

A. The Inclusion of the "Public Opinion" Clause Was Not Improper.

The Collective Bargaining agreement is in the record.[5] It is not the type of agreement sometimes made in which substantially all of the terms of employment are spelled out in detail, leaving no function for the individual contract save to establish the act or evidence of hiring. The variation in the circumstances of employment and capacity of the employees is manifestly so great as to preclude such an agreement.[6]

Indeed, it expressly contemplates the use of individual contracts, for it not only requires the execution of written contracts (Art. 9), but expressly provides that:

> "The Guild will not, by the adoption of by-laws or otherwise, seek to prevent the inclusion in contracts of employment between any writer and the Producer or any Producer signatory hereto of any terms or conditions not violative of this agreement." (Art. 23.)

It was, accordingly, not improper to include in the individual employment agreement a provision requiring Petitioner to do no act which would bring disrepute on himself and, through him, on his employer.

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[5]Clerk's Transcript p. 37. Excerpts are contained in the Findings of Fact. [Clk. Tr. pp. 52-55.]

[6]*E.g.*, the agreement establishes a minimum compensation of $250 a week. (Art. 22.) The compensation of Petitioner was $2,000 a week. [Clk. Tr. p. 33.] Compare *J. I. Case Co. v. N. L. R. B.* (1944), 321 U. S. 332, 336, 338.

Indeed, under State law, such a covenant is implied in any hiring.[7] The trial court found that Petitioner so agreed "expressly and impliedly, in fact and in law.[8]

B. The Collective Bargaining Agreement Does Not Require the Employer to Give Screen and Advertising Credit to One Who Is in Default.

The collective bargaining agreement does not deal with the effect of a default by the employee. That subject is left to the individual agreements or to the generally applicable law of the State.

Thus, it provides that any optional term of employment shall be for not less than 13 weeks (Art. 19). It says nothing about the effect of a default during such term; but manifestly if the employee refuses to work during such 13 week term, the employer need not continue to employ and pay him compensation.

Similarly, while the collective bargaining agreement provides a means of determining which workers engaged on the script are entitled to credit for the screenplay, it is silent as to the effect of a breach of contract by one of the responsible writers. That subject is left to the individual agreement, or to the general principle of law that a party in substantial default may not insist upon the innocent party continuing to perform the contract.

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[7]*Adams v. Southern Pacific Co.* (1928), 204 Cal. 63, 266 Pac. 541. Compare Cal. Labor Code, Sec. 3005.

[8]Findings of Fact, Paragraph XVI. [Clk. Tr. p. 68, lines 10, 15.]

C. The Collective Bargaining Agreement Does Not Purport to Confer Rights to Screen Credit on Petitioner.

But, in point of fact, the collective bargaining agreement does not purport to confer on the individual writer a right to require the producer of the picture to give him screen credit.

A careful reading of the agreement demonstrates that it sets up a procedure whereby it may be determined which one or more of several writers working on a script are the chief contributors thereto and entitled to credit therefor.

However, it is carefully provided in "Schedule A":

> "In no event shall any failure to comply with the provisions of this Subdivision V[9] be deemed a breach of any contract of employment executed with any writer, or entitle him to damages or injunctive relief." (Schedule A, subd. V, p. 32.)

In the body of the collective bargaining agreement it is provided:

> "It is the intent of the parties hereto that nothing in this Agreement shall be construed so as to give to . . . any individual writer employed by the Producer . . . the right to claim a breach of such individual contract of employment by reason of any breach of any provision of this Agreement. The Guild shall have the right to waive any of the provisions of this Agreement on behalf of or with respect to any individual writer." (Art. 26.)

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[9]The Subdivision describing the screen and advertising credits and the manner in which they are to be given.

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And again, although it is provided that each individual employment agreement shall incorporate or be deemed to incorporate certain specified provisions of the collective bargaining agreement for the benefit of the individual writer, those specified provisions *do not include* Article 6[10] (relating to screen credit) or Schedule A (referred to in Art. 6). [Art. 9.]

In the light of these provisions, it is abundantly clear that the provisions of the collective bargaining agreement with respect to screen credit related to the resolution of controversies *between several authors* as to the allocation of screen and advertising credit, but *have no relation to* the question as to the circumstances in which a writer may, *as between himself and the Producer,* lose or forfeit his right to receive such credit.

II.

Petitioner Has Not Been Deprived of Any Right "Specially Set Up or Claimed Under the Statutes of the United States."

We have sought to show that Petitioner has not been deprived of any right of any nature; that he has been treated precisely as his employment agreement and the collective bargaining agreement contemplated.

But even if the State courts were wrong in their treatment of Petitioner, it does not follow that his complaint is cognizable in this Court.

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[10]The quotation indicated by a "b" at pages 5-6 of the Petition herein is from Article 6.

A. The Federal Statutes Do Not Forbid All Individual Employment Contracts.

The Labor-Management Relations Act guarantees the right of collective bargaining.

In the case at bar RKO and the Guild did so bargain and reached agreement.

But, as we have seen, the process of collective bargaining does not preclude all individual employment contracts.

J. I. Case Co. v. N. L. R. B. (1944), 321 U. S. 332, 336.

B. The Individual Contract, as Interpreted and Applied, Interfered With No Federal Right.

True, the Act forbids an employer to interfere with the exercise of the right of collective bargaining; and if he uses the individual contracts in such manner as to interfere with that right, it is an unfair labor practice, cognizable by the National Labor Relations Board.

This is the holding of the *Case* decision.

But no such claim is made in the case at bar.

Indeed, it is doubtful that such a claim could be made in this proceeding. If the individual contract interfered with the Guild in its function of representing the writers in the collective bargaining or other concerted activities, the appropriate procedure would have been for the Guild (not the Petitioner) to proceed before the National Labor Relations Board, as was done in *Case*.

But surely the Labor-Management Relations Act does not make the interpretation of every collective bargaining agreement a question which can only be finally determined in this Court.

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C. The Claim Now Sought to Be Presented Was Not Timely "Specially Set Up or Claimed."

It should likewise be noted that the claim now pressed by Petitioner comes as something as an afterthought.

The theory that RKO's enforcement of its contract deprived him of some right conferred by the Labor-Management Relations Act finds no place in Petitioner's pleadings in the trial court.

If such a thought was introduced in his motion for judgment on the pleadings, the record before this court does not so show. [Clk. Tr. p. 39.]

It was clearly not raised on Petitioner's motion for a new trial, where his memorandum asserts that the Federal rights which were infringed were those conferred by the Fifth Amendment. [Clk. Tr. pp. 76-77.]

Even in his Opening Brief in the California District Court of Appeal, although he cited and quoted from[11] *J. I. Case Co. v. N. L. R. B.* (1944), 321 U. S. 332, in contending that the collective bargaining agreement was controlling, his only direct assertion of the violation of a Federal right was in connection with his contention that RKO could not complain of his taking advantage of the Fifth Amendment. (Op. Br. Cal. D. C. A. p. 25 *et seq.*)

In a somewhat analogous situation this Court has observed:

> "No mention of the national banking act was made, nor any right or privilege claimed under it, nor were the provisions of the Revised Statutes invoked, by name or otherwise. . . .

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[11]Opening Brief, District Court of Appeal, pages 14-15.

"If plaintiffs in error believed that the local statute was unconstitutional and invalid because of conflict with the Federal Constitution or statute, they could and should have said so; but the validity of the act was nowhere specifically drawn in question."

First Natl. Bank v. Estherville (1909), 215 U. S. 341, 347, 348.

Conclusion.

The questions involved in this case are simply questions of the State law of contracts.

They were properly decided by the State courts.

Petitioner now seeks further review on the basis of a claim, never (so far as the record shows) presented to the trial court, and only obliquely to the District Court of Appeal, that the decision below offends a Federally granted right.

But, as we have shown, that contention, too, is fallacious.

We submit that certiorari should be denied.

Respectfully submitted,

PEERY PRICE,

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